

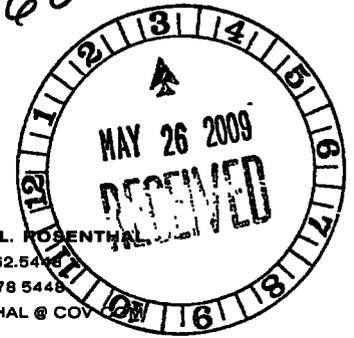
225 160

COVINGTON & BURLING LLP

1201 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004-2401
TEL 202 682 6000
FAX 202 662 6291
WWW COV COM

BEIJING
BRUSSELS
LONDON
NEW YORK
SAN DIEGO
SAN FRANCISCO
SILICON VALLEY
WASHINGTON

MICHAEL L. ROSENTHAL
TEL 202.662.5448
FAX 202 778 5448
MROSENTHAL@COV



May 26, 2009

BY HAND

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings
MAY 26 2009
Part of
Public Record

Re: Docket No. 42114, U.S. Magnesium, L.L.C. v. Union Pacific
Railroad Company

Dear Secretary Quinlan:

Enclosed for filing in the above-referenced matter please find the original and ten copies of Union Pacific's Answer to USM's Complaint. Also enclosed for filing under seal is a CD containing Union Pacific's preliminary estimate of the variable costs of each challenged movement and the documents Union Pacific relied upon to determine the inputs used in the URCS Phase III program to produce the estimates, as required by 49 C.F.R. § 1111.4. The CD contains certain information that should be treated as Confidential.

An additional paper copy of Union Pacific's Answer is also enclosed. Please return a date-stamped copy to our messenger.

Thank you for your attention to this matter.

Sincerely,

Michael L. Rosenthal

Enclosures

cc: Thomas W. Wilcox

225/60

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



U.S. MAGNESIUM, L.L.C.,
Complainant,
v.
UNION PACIFIC RAILROAD COMPANY
Defendant.

Docket No. 42114

ENTERED
Office of Proceedings
MAY 26 2009
Part of
Public Record

UNION PACIFIC'S ANSWER TO USM'S COMPLAINT

J. MICHAEL HEMMER
LOUISE A. RINN
TONYA W. CONLEY
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
Telephone: (402) 544-3309
Facsimile: (402) 501-0129

LINDA J. MORGAN
MICHAEL L. ROSENTHAL
CHARLES H.P. VANCE
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 662-6000
Facsimile: (202) 662-6291

Attorneys for Union Pacific Railroad Company

May 26, 2009

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

U.S. MAGNESIUM, L.L.C.,)	
)	
Complainant,)	
)	
v.)	Docket No. 42114
)	
UNION PACIFIC RAILROAD COMPANY)	
)	
Defendant.)	
)	

UNION PACIFIC'S ANSWER TO USM'S COMPLAINT

Defendant Union Pacific Railroad Company ("UP") hereby answers the Complaint filed by Complainant U.S. Magnesium, L.L.C. ("USM") in this proceeding. UP responds to the allegations in each separately numbered paragraph of the Complaint as follows:

1. UP admits that USM operates a facility at Rowley, Utah on the Great Salt Lake. UP denies the allegations in Paragraph 1 because it lacks knowledge or information sufficient to form a belief as to their truth.
2. UP admits that USM's facility at Rowley produces chlorine, which UP transports in rail tank cars supplied by USM. UP denies the remaining allegations in Paragraph 2 because it lacks knowledge or information sufficient to form a belief as to their truth.
3. UP admits that, by some measures, it is the nation's largest railroad, that it provides common carrier service, that it transports freight in interstate and intrastate commerce, that it is subject to certain provisions of the ICC Termination Act, and that it is subject, in certain circumstances, to the jurisdiction of the Surface Transportation Board. UP denies the remaining

allegations in Paragraph 3 because it lacks knowledge or information sufficient to form a belief as to their truth.

4. UP admits the allegations in Paragraph 4.

5. UP denies the allegation in the second sentence of Paragraph 5 because its records indicate that USM shipped one fewer car from Eloy than is alleged. UP denies the allegation in the third sentence of Paragraph 5 because it lacks knowledge or information sufficient to form a belief as to its truth. UP admits the remaining allegations in Paragraph 5, except that UP denies that the Eloy movement's "One-way distance" is 1,133 miles.

6. UP denies the allegation in the second sentence of Paragraph 6 because its records indicate that USM shipped one more car from Sahuarita than is alleged. UP denies the allegation in the third sentence of Paragraph 6 because it lacks knowledge or information sufficient to form a belief as to its truth. UP admits the remaining allegations in Paragraph 6, except that UP denies that the Sahuarita movement's "One-way distance" is 1,199.7 miles.

7. UP admits the allegations in Paragraph 7, except that UP denies that Paragraphs 8 and 9 accurately summarize the parties' discussions.

8. UP admits that USM requested common carrier tariff rates and service terms for rail service to Eloy and Sahuarita in a request dated January 16, 2009. UP also admits the allegations in the footnote to Paragraph 8, except that USM's purported reservation of rights and remedies states a legal conclusion to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations. UP denies the remaining allegations in Paragraph 8.

9. UP admits the allegations in Paragraph 9.

10. UP denies the allegations in Paragraph 10.

11. UP admits the allegations in Paragraph 11.

12. UP admits the allegations in Paragraph 12, except that UP denies that there are no railroad alternatives that constrain UP's pricing power over the movement of chlorine from Rowley to Elroy and/or Sahuarita.

13. UP admits that numerous federal regulations affect the transportation of TIH commodities. UP denies the remaining allegations in Paragraph 13 because it lacks knowledge or information sufficient to form a belief as to their truth.

14. UP admits the allegations in Paragraph 14.

15. UP denies the allegations in Paragraph 15, except that UP admits that it could not prevail on the issue of whether there is qualitative evidence of effective competition from other carriers or modes of transportation for the movements of chlorine from Rowley to Eloy and Sahuarita under the standards currently being applied by the Board.

16. UP admits that the common carrier rates established by UP in Tariff 4949, Item 1000-A for transportation of chlorine from Rowley to Eloy and Sahuarita produce revenues in excess of 180% of UP's variable costs of providing that transportation. UP denies the remaining allegations in Paragraph 16.

17. UP denies the allegations in Paragraph 17. UP avers by way of further response that USM's estimates of the URCS Phase III variable costs and revenue-to-variable cost ratio for the movement from Rowley to Eloy is incorrect, and UP submits more accurate estimates with this Answer.

18. UP denies the allegations in Paragraph 18. UP avers by way of further response that USM's estimates of the URCS Phase III variable costs and revenue-to-variable cost

ratio for the movement from Rowley to Sahuarita is incorrect, and UP submits more accurate estimates with this Answer.

19. Paragraph 19 states a legal conclusion to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations in Paragraph 19.

20. Paragraph 20 states legal conclusions to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations in Paragraph 20.

21. Paragraph 21 states a legal conclusion to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations in this Paragraph.

22. UP admits that USM has asked the Board to apply the Three-Benchmark approach of *Simplified Standards*. UP denies the remaining allegations in Paragraph 22.

23. UP denies that USM is entitled to any relief, but it admits that any relief would be capped under *Simplified Standards*.

24. Paragraph 24 does not contain any allegations that are directed at UP and therefore requires no answer.

25. Paragraph 25 does not contain any allegations that are directed at UP and therefore requires no answer.

26. Paragraph 26 states a legal conclusion to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations in this Paragraph.

27. UP admits that, currently with the filing and service of the Complaint, USM provided UP with a document entitled "Disclosure Pursuant to 49 C.F.R. § 1111.1(b)."

In response to the Complaint's "WHEREFORE" clause (p. 10), including clauses numbered 1 through 4, UP denies that USM is entitled to any of the relief it seeks in this proceeding.

Respectfully submitted,



LINDA J. MORGAN
MICHAEL L. ROSENTHAL
CHARLES H.P. VANCE
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 662-6000
Facsimile: (202) 662-6291

J. MICHAEL HEMMER
LOUISE A. RINN
TONYA W. CONLEY
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
Telephone: (402) 544-3309
Facsimile: (402) 501-0129

Attorneys for Union Pacific Railroad Company

May 26, 2009

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that on this 26th day of May, 2009, I caused copies of Union Pacific's Answer to USM's Complaint to be served by hand and by e-mail on:

Thomas W. Wilcox
GKG Law, P.C.
Canal Square
1054 31st Street, N.W., Suite 200
Washington, DC 20007-4492



Michael L. Rosenthal